

HOUSE No. 14

Accompanying the first recommendation of the Public Employee Retirement Administration Commission (House, No. 13). Public Service.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PENSION REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subdivision (2) of Section 23 of Chapter 32 of
2 the General Laws is hereby amended by striking out sub-para-
3 graph (b) and inserting in place thereof the following:—

4 (b) The board of each system shall invest and reinvest the funds
5 of such system in the PRIT Fund pursuant to subdivision (8) of
6 section twenty two, in the PRIT Fund by purchasing shares of said
7 fund, as provided for in the trust agreement adopted by the PRIM
8 Board pursuant to subdivision (2A) or as follows:—

9 (i) in accordance with the standards set forth in subdivision (3),
10 provided that:—

11 (A) no investment of funds shall be made in stocks, securities
12 or other obligations of any company which derives more than 15
13 per cent of its revenues from the sale of tobacco products.

14 (B) in investing such funds the board shall employ an invest-
15 ment manager or investment managers who shall invest the funds
16 of the system.

17 (C) no funds shall be invested directly in mortgages or collat-
18 eral loans.

19 No investment of funds shall take place until board has
20 received from the commission an acknowledgement of receipt of
21 the following:—

22 (a) certification that, in making the selection, the board has
23 complied with the process established in section 23A;

24 (b) a copy of the vendor certification required under
25 section 23A;

- 26 (c) copies of disclosure forms submitted by the selected vendor;
27 (d) a certification that the investment is not a prohibited invest-
28 ment as set forth in regulations of the commission;
29 (e) in the event that the board has retained a consultant, a copy
30 of the consultant reports pertaining to the investment and the
31 selected vendor; and,
32 (f) a copy of the board certification required under section 23A.
33 The commission may withhold the acknowledgement if it deter-
34 mines that it is in the best interest of the retirement system pro-
35 vided, however, that it must so notify the board within ten days of
36 receipt of completed documents as required by this section.
37 Prior to the retention of an investment consultant the board
38 must receive from the commission an acknowledgement of receipt
39 of the following:—
40 (a) certification that, in making the selection, the board has
41 complied with the process established in section 23A;
42 (b) copy of the vendor certification required under section 23A;
43 (c) copies of disclosure forms submitted by the selected consul-
44 tant; and,
45 (d) copy of the board certification required under section 23A.

1 SECTION 2. Section 50 of Chapter 7 of the General Laws as
2 appearing in the 2004 Official Edition is hereby amended by
3 striking out lines 68 through 69 inclusive.

1 SECTION 3. Clause 19 of paragraph (b) of Section (1) of
2 Chapter 30B of the General Laws is hereby amended by adding
3 the following:—
4 provided, however, that such procurements shall take place in
5 accordance with the provisions of section 23A of chapter 32.

1 SECTION 4. Chapter 32 of the General Laws is hereby
2 amended by adding the following section:—
3 Section 21A. (a) As used in this section the following words
4 shall, unless the context requires otherwise, have the following
5 meanings:—
6 “Affiliates”, entities which are affiliates of each other when
7 either directly or indirectly one concern or individual controls or
8 has the power to control another, or when a third party controls or
9 has the power to control both.

10 “Commission”, the Public Employee Retirement Administra-
11 tion Commission.

12 “Contract”, a contract for the furnishing of supplies or services
13 to any retirement board.

14 “Debarment”, an exclusion from contracting or subcontracting
15 with a retirement board for a reasonable, specified period of time
16 commensurate with the seriousness of the offense.

17 “Person”, any natural person, business, partnership, corpora-
18 tion, union, committee, club or other organization, entity or group
19 of individuals.

20 “Retirement board”, a board established pursuant to the provi-
21 sions of chapter 32, the provisions of chapter 34B or the Massa-
22 chusetts water resources authority retirement board, excluding the
23 pension reserves investment management board.

24 “Suspension”, the temporary disqualification of a vendor who
25 is suspected upon adequate evidence of engaging or having
26 engaged in conduct which constitutes grounds for debarment.

27 “Vendor”, any person that has furnished or seeks to furnish sup-
28 plies or services under a contract with a retirement board.

29 (a) The Commission shall establish and maintain a consolidated
30 list of vendors to whom contracts shall not be awarded and from
31 whom offers, bids, or proposals shall not be solicited. The list
32 shall show at a minimum the following information:

33 (1) the names of those persons debarred or suspended in alpha-
34 betical order with appropriate cross reference where more than
35 one name is involved in a single debarment or suspension;

36 (2) the basis of authority for each debarment or suspension;

37 (3) the extent of restrictions imposed;

38 (4) the termination date of each debarment or suspension; and,

39 (5) in the case of a suspension, the hearing date, if and when
40 set, for debarment proceedings.

41 The commission shall cause the list to be kept current by the
42 issuance of notices of additions and deletions. The list shall be
43 published on a periodic basis, together with notices of additions
44 and deletions therefrom, in the goods and services bulletin and the
45 central register published by the state secretary and in such other
46 publications as the commission shall designate. The commission
47 shall also forward said list to the inspector general, the attorney
48 general, and the state auditor.

49 (b) Debarment may be imposed for the following causes:

50 (1) conviction or final adjudication by a court or administrative
51 agency of competent jurisdiction of any of the following offenses:

52 (i) a criminal offense incident to obtaining or attempting to
53 obtain a public or private contract or subcontract, or in the perfor-
54 mance of such contract or subcontract;

55 (ii) a criminal offense involving embezzlement, theft, forgery,
56 bribery, falsification or destruction of records, receiving stolen
57 property or any other offense indicating a lack of business
58 integrity or business honesty which seriously and directly affects
59 the vendor's present responsibility as a public contractor;

60 (iii) a violation of state or federal antitrust laws arising out of
61 the submission of bids or proposals;

62 (iv) a violation of chapter two hundred and sixty-eight A; and,

63 (v) a violation of chapter thirty-two.

64 (2) substantial evidence, as determined by the commission, of
65 any of the following acts:

66 (i) willfully supplying materially false information incident to
67 obtaining or attempting to obtain or performing any public con-
68 tract or subcontract;

69 (ii) willful failure to comply with record-keeping and
70 accounting requirements prescribed by law or regulation;

71 (iii) a record of failure to perform or of unsatisfactory perfor-
72 mance in accordance with the terms of one or more public con-
73 tracts, provided that such failure to perform or unsatisfactory
74 performance has occurred within a reasonable period of time pre-
75 ceding the determination to debar and provided further that such
76 failure to perform or unsatisfactory performance was not caused
77 by factors beyond the vendor's control;

78 (iv) the submission to the board or the commission of an inac-
79 curate disclosure statement;

80 (v) the failure to disclose to the board and the commission any
81 compensation provided to any person in regards to attempting to
82 obtain or the performance of a public contract or subcontract,
83 including, but not limited to, compensation provided by third par-
84 ties retained by the vendor to any other person; and,

85 (vi) any other cause affecting the responsibility of a vendor
86 which the commission determines to be of such a serious and
87 compelling nature as to warrant debarment.

88 (c) No vendor may be suspended unless the commission has
89 first informed the vendor by written notice of the proposed sus-
90 pension mailed by registered or certified mail to the vendor's last
91 known address, except when the commission determines that
92 immediate suspension is necessary to prevent serious harm to the
93 retirement system, in which case the suspension shall take effect
94 immediately upon signing by the executive director of an order of
95 suspension, and notice shall be mailed to the vendor at the earliest
96 opportunity. The notice shall inform the vendor of the reasons for
97 the proposed suspension and shall state that the vendor may
98 within fourteen days respond in writing and may in such response
99 request a hearing. The commission may extend the period for
100 response at the request of the vendor. The commission shall deter-
101 mine whether to impose the suspension or, in the case of an emer-
102 gency suspension imposed prior to notice to the vendor, whether
103 to continue the suspension after reviewing the vendor's response,
104 if any, and making such investigation as the commission deter-
105 mines is necessary and appropriate. An indictment, or any infor-
106 mation or other filing by a public agency charging a criminal
107 offense, for any of the offenses listed in paragraph (1) of subsec-
108 tion (b) shall constitute adequate evidence to support a suspen-
109 sion.

110 If the vendor requests a hearing, and the suspension is not
111 based on an indictment, the commission shall conduct a hearing
112 according to the rules for the conduct of adjudicatory hearings
113 established by the secretary of administration pursuant to chapter
114 thirty A. Such hearing shall be initiated within thirty days of the
115 imposition of the suspension, unless the vendor requests that the
116 hearing be delayed. Officers and employees of the commission
117 and records of the commission shall not be subject to subpoena
118 for such hearing, if in the opinion of the commission production
119 of records or testimony would prejudice any pending investigation
120 by the commission.

121 A suspension shall not exceed twelve months unless a pending
122 administrative or judicial proceeding in which the vendor is a
123 party may result in a conviction or final adjudication of an offense
124 listed in paragraph (1) of subsection (b).

125 (d) No vendor may be debarred under this section unless the
126 commission has first informed the vendor by written notice of the

127 proposed debarment mailed by registered or certified mail to the
128 vendor's last known address. The notice shall inform the vendor of
129 the reasons for the debarment and shall state that the vendor will
130 be accorded an opportunity for a hearing if the vendor so requests
131 within fourteen days of receipt of the notice. A hearing requested
132 under this paragraph shall be conducted by the commission within
133 sixty days of receipt of the request, unless the commission grants
134 additional time therefore at the request of the vendor. The hearing
135 shall be conducted according to the rules for the conduct of adju-
136 dicatory hearings established by the commissioner of administra-
137 tion pursuant to chapter thirty A. A debarment shall not be
138 imposed until (i) fourteen days after receipt by the vendor of
139 notice of the proposed debarment if no hearing is requested, or
140 (ii) the issuance of a written decision by the commission which
141 makes specific findings that there is sufficient evidence to support
142 the debarment and that debarment for the period specified in the
143 decision is required to protect the integrity of the public con-
144 tracting process. A vendor shall be notified forthwith of the deci-
145 sion by registered or certified mail, and of the vendor's right to
146 judicial review in the event that the decision is adverse to the
147 vendor. If a suspension precedes a debarment, the suspension
148 period shall be considered in determining the debarment period.

149 (e) A debarment or suspension may include all known affiliates
150 of a vendor. The decision to include a known affiliate within the
151 scope of a debarment or suspension shall be made on a case-by-
152 case basis, after giving due regard to all relevant facts and circum-
153 stances. The offense or act of an individual justifying suspension,
154 or the evidence justifying a suspension, may be imputed to the
155 entity with which the individual is connected when such offense
156 or act occurred in connection with the individual's performance of
157 duties for or on behalf of the entity or with the knowledge,
158 approval, or acquiescence of the entity or one or more of its prin-
159 cipals. The entity's acceptance of the benefits derived from the
160 conduct shall be evidence of such knowledge, approval, or acqui-
161 escence. The offense or act of an entity justifying debarment, or
162 the evidence justifying a suspension, may be imputed to any
163 officer, director, shareholder, partner, employee or other indi-
164 vidual associated with the entity who participated in, knew of, or
165 had reason to know of the entity's act. An entity may not be sus-

166 pended or debarred except in accordance with the procedures set
167 forth in this section.

168 (f) In determining whether to debar a vendor, or the period of a
169 debarment, all mitigating facts and circumstances shall be taken
170 into consideration. A debarment may be removed or the period
171 thereof may be reduced by the commission upon the submission
172 of an application supported by documentary evidence setting forth
173 appropriate grounds for the granting of relief, such as newly dis-
174 covered material evidence, reversal of a judgment or conviction,
175 bona fide change of ownership or management, or the elimination
176 of the cause for which the debarment was imposed.

177 (g) During the period for which a person has been debarred or
178 suspended, that person shall not submit or cause to be submitted
179 offers, bids, or proposals to any retirement board, nor shall any
180 retirement board solicit or consider offers, bids, or proposals
181 from, nor execute, renew, or extend any contract with, a debarred
182 or suspended vendor, and a vendor shall not contract for services
183 from a debarred or suspended subcontractor on any contract with
184 a retirement system.

1 SECTION 5. Subdivision (3) of Section 23 of Chapter 32 of the
2 General Laws is hereby amended by adding the following:

3 Each member of a retirement board established pursuant to the
4 provisions of this chapter shall upon the commencement of their
5 term file with the commission a statement acknowledging that
6 they are aware of and will comply with the standards set forth in
7 chapter 268A of the general laws, the provisions of this chapter
8 and the provisions of regulations promulgated pursuant to this
9 chapter.

1 SECTION 6. Chapter 32 of the General Laws is hereby
2 amended by adding the following section:—

3 Section 20C. (a) Every member of a retirement board shall file
4 a statement of financial interests for the preceding calendar year
5 with the commission within thirty days after becoming a member
6 of a retirement board, on or before May first of each year there-
7 after that such person is a member of a retirement board and on or
8 before May first of the year after such person ceases to be a
9 member of a retirement board;

10 (b) The commission shall, upon receipt of a statement of finan-
11 cial interests pursuant to the provisions of this section, issue to the
12 person filing such statement a receipt verifying the fact that a
13 statement of financial interests has been filed and a receipted copy
14 of such statement.

15 (c) No member of a retirement board shall be allowed to con-
16 tinue in his duties unless he has filed a statement of financial
17 interests with the commission as required by this section.

18 (d) The statement of financial interests filed pursuant to the
19 provisions of this section shall be on a form prescribed by the
20 commission and shall be signed under penalty of perjury by the
21 reporting person.

22 (e) Reporting persons shall disclose, to the best of their knowl-
23 edge, the following information for the preceding calendar year,
24 or as of the last day of said year with respect to the information
25 required by clauses (2), (3) and (6) below; such persons shall also
26 disclose the same information with respect to their immediate
27 family provided, however, that no amount need be given for such
28 information with regard to the reporting person's immediate
29 family:

30 (1) the name and address of, the nature of association with, the
31 share of equity in, if applicable, of each business with which he is
32 associated;

33 (2) the identity of all securities and other investments with a
34 fair market value of greater than one thousand dollars which were
35 beneficially owned, not otherwise reportable hereunder;

36 (3) the name and address of each creditor to whom more than
37 one thousand dollars was owed; provided, however, that obliga-
38 tions arising out of retail installment transactions, educational
39 loans, medical and dental expenses, debts incurred in the ordinary
40 course of business, and any obligation to make alimony or support
41 payments, shall not be reported; and provided, further, that such
42 information need not be reported if the creditor is a relative of the
43 reporting person within the third degree of consanguinity or
44 affinity;

45 (4) the name and address of the source, and the cash value of
46 any reimbursement for expenses aggregating more than one hun-
47 dred dollars in the calendar year if the recipient is a member of a
48 retirement board and the source of such reimbursement is a person

49 having a direct interest in a matter before the retirement board of
50 which the recipient is a member;

51 (5) the name and address of the donor, and the fair market
52 value, if determinable, of any gifts in the calendar year, if the
53 recipient is a member of a retirement board and the source of such
54 gift(s) is a person having a direct interest in a matter before the
55 retirement board of which the recipient is a member;

56 (6) the name and address of the source, and the fair market
57 value, of any honoraria aggregating more than one hundred dol-
58 lars if the recipient is a member of a retirement board and the
59 source of such honoraria is a person having a direct interest in a
60 matter before a retirement board;

61 (7) the name and address of any creditor who has forgiven an
62 indebtedness of over one thousand dollars, and the amount for-
63 given if the creditor is a person having a direct interest in a matter
64 before a retirement board; provided, however, that no such infor-
65 mation need be reported if the creditor is a relative within the
66 third degree of consanguinity or affinity of the reporting person,
67 or the spouse of such a relative; and,

68 (8) the name and address of any business from which the
69 reporting person is taking a leave of absence;

70 Nothing in this section shall be construed to require the disclo-
71 sure of information, which is privileged by law.

72 Failure of a reporting person to file a statement of financial
73 interests within ten days after receiving notice in writing from the
74 Commission which states in detail the deficiency and the penalties
75 for failure to file a statement of financial interests, or the filing of
76 an incomplete statement of financial interests after receipt of such
77 a notice shall result in the removal of the reporting person from
78 the board from the board and he or she shall not be permitted to
79 serve on any retirement board established pursuant to the provi-
80 sions of this chapter. Said failure is a violation of this chapter and
81 the commission may initiate appropriate proceedings pursuant to
82 the provisions of section twenty-four.

1 SECTION 7. Clause 26 of Section 7 of Chapter 4 of the
2 General Laws is hereby amended by adding the following sub-
3 clause:—

4 (q) statements filed pursuant to Section 20C of Chapter 32.

1 SECTION 8. Section 20 of Chapter 32 of the General Laws is
2 hereby amended by adding the following paragraph:—

3 (4 7/8 C) No employee, contractor, vendor or any person
4 receiving any remuneration, financial benefit or consideration of
5 any kind, other than a retirement benefit or the statutory stipend
6 for serving on the retirement board, from a retirement board or
7 from any person doing business with a retirement board shall be
8 eligible to serve on a retirement board provided, however, that an
9 employee of a retirement board may serve on a retirement board
10 other than the retirement board by which he or she is employed
11 and provided, further, that the provisions of this paragraph shall
12 apply only to individuals who first become members of a retire-
13 ment board on or after January 1, 2008.

1 SECTION 9. Paragraph (b) of Section 19 of Chapter 34B of the
2 General Laws is hereby amended in line 14 by inserting the
3 following after the word “32”:—

4 Provided that no employee, contractor, vendor or person
5 receiving any remuneration, financial benefit or consideration of
6 any kind, other than a retirement benefit or the statutory stipend
7 for serving on the retirement board, from a retirement board or
8 from any person doing business with a retirement board shall be
9 eligible to serve on a retirement board provided, however, that an
10 employee of a retirement board may serve on a retirement board
11 other than the retirement board by which he or she is employed
12 and provided, further, that the provisions of this paragraph shall
13 apply only to individuals who first become members of a retire-
14 ment board on or after January 1, 2008.

1 SECTION 10. Chapter 32 of the General Laws is hereby
2 amended by adding the following section:—

3 Section 23A (a) This section shall apply to every retirement
4 board contract for the procurement of investment, actuarial, legal
5 and accounting services.

6 As used in this section the following words shall, unless the
7 context requires otherwise, have the following meanings:—

8 “Contract”, all types of agreement for the procurement of serv-
9 ices, regardless of what the parties may call the agreement.

10 “Contractor”, a person having a contract with the retirement
11 board.

12 “Retirement board”, a board established under the provisions of
13 this chapter , the provisions of chapter thirty-four B or the Massa-
14 chusetts water resources authority retirement board excluding the
15 pension reserves investment management board.

16 “Majority vote”, as to any action by or on behalf of a retirement
17 board, a simple majority of the board.

18 “Minor informalities”, minor deviations, insignificant mistakes,
19 and matters of form rather than substance of the proposal, or con-
20 tract document which can be waived or corrected without preju-
21 dice to other offerors, potential offerors, or the retirement board.

22 “Person”, any natural person, business, partnership, corpora-
23 tion, union, committee, club, or other organization, entity or group
24 of individuals.

25 “Procurement”, acquiring a service, and all functions that per-
26 tain to the obtaining of a service, including description of require-
27 ments, selection and solicitation of sources, preparation and award
28 of contract, and all phases of contract administration.

29 “Procurement officer”, an individual duly authorized by the
30 retirement board to assist in a procurement.

31 “Proposal”, a written offer to provide a service at a stated price
32 submitted in response to a request for proposals.

33 “Purchase description”, the words used in a solicitation to
34 describe the services to be purchased, including specifications
35 attached to or incorporated by reference into the solicitation.

36 “Request for proposals”, the documents utilized for soliciting
37 proposals, including documents attached or incorporated by refer-
38 ence.

39 “Responsible bidder or offeror”, a person who has the capa-
40 bility to perform fully the contract requirements, and the integrity
41 and reliability which assures good faith performance.

42 “Responsive bidder or offeror”, a person who has submitted a
43 bid or proposal which conforms in all respects to the request for
44 proposals.

45 “Services”, the furnishing of labor, time, or effort by a con-
46 tractor, not involving the furnishing of a specific end product
47 other than reports. This term shall not include employment agree-
48 ments, collective bargaining agreements, or grant agreements.

49 (1) A retirement board shall enter into procurement contracts
50 for investment, actuarial, legal and accounting services utilizing

51 competitive sealed proposals, in accordance with the provisions of
52 this section.

53 (2) A retirement board that awards a contract shall maintain a
54 file on each such contract and shall include in such file a copy of
55 all written documents required by this section. Written documents
56 required by this section shall be retained by the retirement board
57 for at least six years from the date of final payment under the con-
58 tract.

59 (a) The retirement board or its procurement officer shall give
60 public notice of the request for proposals and a reasonable time
61 prior to the date for the opening of proposals. The notice shall:

62 (1) indicate where, when and for how long the request for pro-
63 posal may be obtained;

64 (2) describe the service desired, and reserve the right of the
65 retirement board to reject any or all bids;

66 (3) remain posted, for at least two weeks, in a conspicuous
67 place in or near the offices of the retirement board until the time
68 specified in the request for proposals; and

69 (4) be published at least once, not less than two weeks prior to
70 the time specified for the receipt of proposals, in a newspaper of
71 general circulation within the area served by the retirement board
72 and in the case of a procurement for investment, accounting, actu-
73 arial or legal services in a publication of interest to those engaged
74 in providing such services.

75 The retirement board or its procurement officer shall also place
76 the notice in any publication established by the state secretary for
77 the advertisement of such procurements.

78 The retirement board or its procurement officer may distribute
79 copies of the notice to prospective bidders, and may compile and
80 maintain lists of prospective bidders to which notices may be sent.

81 (b) The retirement board shall unconditionally accept a pro-
82 posal without alteration or correction, except as provided in this
83 paragraph. A bidder may correct, modify, or withdraw a proposal
84 by written notice received in the office designated in the request
85 for proposals prior to the time and date set for the proposal
86 opening. After proposal opening, a bidder may not change the
87 price or any other provision of the proposal in a manner prejudi-
88 cial to the interests of the retirement board or fair competition.
89 The retirement board shall waive minor informalities or allow the

90 bidder to correct them. If a mistake and the intended proposal are
91 clearly evident on the face of the proposal document, the procure-
92 ment officer shall correct the mistake to reflect the intended cor-
93 rect proposal and so notify the bidder in writing, and the bidder
94 may not withdraw the proposal. A bidder may withdraw a pro-
95 posal if a mistake is clearly evident on the face of the proposal
96 document but the intended correct proposal is not similarly evi-
97 dent.

98 (c) The retirement board shall solicit proposals through a
99 request for proposals. The request for proposals shall include:

100 (1) the time and date for receipt of proposals, the address of the
101 office to which the proposals are to be delivered, the maximum
102 time for proposal acceptance by the retirement board;

103 (2) the purchase description and all evaluation criteria that will
104 be utilized pursuant to paragraph (c); and,

105 (3) all contractual terms and conditions applicable to the pro-
106 curement provided that the contract may incorporate by reference
107 a plan submitted by the selected offeror for providing the required
108 services.

109 The request for proposals may incorporate documents by refer-
110 ence; provided, however, that the request for proposals specifies
111 where prospective offerors may obtain the documents. The retire-
112 ment board or its procurement officer shall make copies of the
113 request for proposals available to all persons on an equal basis.

114 (d) The retirement board or its procurement officer shall not
115 open the proposals publicly, but shall open them in the presence of
116 one or more witnesses at the time specified in the request for pro-
117 posals. Notwithstanding the provisions of section seven of chapter
118 four, until the completion of the evaluations, or until the time for
119 acceptance specified in the request for proposals, whichever
120 occurs earlier, the contents of the proposals shall remain confiden-
121 tial and shall not be disclosed to competing offerors. At the
122 opening of proposals the retirement board or its procurement
123 officer shall prepare a register of proposals which shall include the
124 name of each offeror and the number of modifications, if any,
125 received. The register of proposals shall be open for public
126 inspection.

127 (e) The retirement board or its consultant retained pursuant to
128 the provisions of this chapter shall be responsible for the initial

129 evaluation of the proposals. The retirement board or its consultant
130 retained pursuant to the provisions of this chapter shall prepare
131 their initial evaluations based solely on the criteria set forth in the
132 request for proposals. The evaluations shall specify in writing:

133 (1) for each evaluation criterion, a rating of each proposal as
134 highly advantageous, advantageous, not advantageous, or unac-
135 ceptable, and the reasons for the rating;

136 (2) a composite rating for each proposal, and the reasons for the
137 rating; and,

138 (3) revisions, if any, to each proposed plan for providing the
139 required services which should be obtained by negotiation prior to
140 awarding the contract to the offeror of the proposal.

141 In the event the initial evaluation is conducted by a consultant
142 retained pursuant to the provisions of this chapter said consultant
143 shall review all initial evaluations with the retirement board and
144 provide to each member of the retirement board the initial evalua-
145 tion of each proposal.

146 (f) The retirement board shall determine the most advantageous
147 proposal from a responsible and responsive offeror taking into
148 consideration price and the evaluation criteria set forth in the
149 request for proposals. The retirement board shall award the con-
150 tract by written notice to the selected offeror within the time for
151 acceptance specified in the request for proposals. The parties may
152 extend the time for acceptance by mutual agreement. The retire-
153 ment board may condition an award on successful negotiation of
154 the revisions specified in the evaluation, and shall explain in
155 writing the reasons for omitting any such revision from a plan
156 incorporated by reference in the contract.

157 (g)(1) In the event of a competitive process to select an invest-
158 ment service provider the request for proposals shall include
159 mandatory contractual terms and conditions to be incorporated
160 into the contract including provisions stating that the contractor is
161 a fiduciary with respect to the funds which the contractor invests
162 on behalf of the retirement board, provisions stating that the con-
163 tractor shall not be indemnified by the retirement board, provi-
164 sions requiring the contractor to annually inform the commission
165 and the board of any arrangements in oral or in writing, for com-
166 pensation or other benefit received or expected to be received by
167 the contractor or a related person from others in connection with

168 the contractors services to the retirement board or any other client,
169 provisions requiring the contractor to annually disclose to the
170 commission and the retirement board any compensation, in what-
171 ever form, paid or expected to be paid, directly or indirectly, by
172 the contractor or a related person to others in relation to the con-
173 tractors services to the retirement board or any other client, and
174 provisions requiring the contractor to annually disclose to the
175 commission and the retirement board in writing any conflict of
176 interest the contractor may have that could reasonably be expected
177 to impair the contractor's ability to render unbiased and objective
178 services to the retirement board. Other mandatory contractual
179 terms and conditions shall address investment objectives, bro-
180 kerage practices, proxy voting and tender offer exercise proce-
181 dures, terms of employment and termination provisions. The
182 retirement board shall make a preliminary determination of the
183 most advantageous proposal from a responsible and responsive
184 offeror taking into consideration price and the evaluation criteria
185 set forth in the request for proposals. The retirement board or its
186 duly designated agent, subject to the approval of the retirement
187 board, may negotiate all terms of the contract not deemed manda-
188 tory or non-negotiable with such offeror. If, after negotiation with
189 such offeror, the retirement board in consultation with its duly
190 designated agent and its consultant retained pursuant to the provi-
191 sions of this chapter determines that it is in the best interests of
192 the retirement board, the retirement board in consultation with its
193 consultant retained pursuant to the provisions of this chapter may
194 determine the proposal which is the next most advantageous pro-
195 posal from a responsible and responsive offeror taking into con-
196 sideration price and the evaluation criteria set forth in the request
197 for proposals, and may negotiate all terms of the contract with
198 such offeror. The retirement board shall award the contract to the
199 most advantageous proposal from a responsible and responsive
200 offeror taking into consideration price, the evaluated criteria set
201 forth in the request for proposals, and the terms of the negotiated
202 contract. The retirement board shall award the contract by written
203 notice to the selected offeror within the time for acceptance speci-
204 fied in the request for proposals. The time for acceptance may be
205 extended for up to 45 days by mutual agreement between the
206 retirement board and the responsible and responsive offeror

207 offering the most advantageous proposal as determined by the
208 retirement board.

209 On or before January 1 of each year the contractor shall file the
210 disclosures required herein with the board and the commission.
211 Failure to file disclosures or the filing of inaccurate disclosures
212 shall subject the contractor to proceedings under section 21A.

213 (2) The retirement board may cancel a request for proposals or
214 may reject in whole or in part any and all proposals when the
215 retirement board determines that cancellation or rejection serves
216 the best interests of the system. The retirement board shall state in
217 writing the reason for a cancellation or rejection.

218 (3) A person submitting a proposal for the procurement or dis-
219 posal of services to any retirement board shall certify in writing
220 on the proposal as follows:

221 The undersigned certifies under penalties of perjury that this
222 proposal has been made and submitted in good faith and without
223 collusion or fraud with any other person. As used in this certifica-
224 tion, the word “person” shall mean any natural person, business,
225 partnership, corporation, union, committee, club, or other organi-
226 zation, entity, or group of individuals.

227 _____
(Signature of individual submitting bid or proposal)

228 _____
(Name of business)

229 (4) Each retirement board member shall certify to the commis-
230 sion in writing with respect to a procurement subject to the provi-
231 sions of this section, as follows:

232 The undersigned certifies under penalties of perjury that, to the
233 best of his/her knowledge and belief, this proposal has been made
234 and submitted in good faith and without collusion or fraud with
235 any other person. As used in this certification, the word “person”
236 shall mean any natural person, business, partnership, corporation,
237 union, committee, club, or other organization, entity, or group of
238 individuals.

239 (Signature of individual retirement board member)

240 (Name of retirement board)

241 (5) No person shall cause or conspire to cause the splitting or
242 division of any request for proposals, proposal, solicitation, or
243 quotation for the purpose of evading a requirement of this section.

244 (6) Unless otherwise provided by law and subject to
245 paragraph (a), a retirement board may enter into a contract for any
246 period of time which serves the best interests of the retirement
247 board; provided, however, that the retirement board shall include
248 in the solicitation the term of the contract and conditions of
249 renewal, extension or purchase, if any.

250 (a) A retirement board shall not award a contract for a term
251 exceeding five years, including any renewal, extension, or option
252 provided, however, that a retirement board may participate in a
253 limited partnership, trust or other entity with a term for a period
254 longer than five years as part of an investment of system assets.

255 When a contract is to contain an option for renewal, extension,
256 or purchase, the solicitation shall include notice of the provision.
257 The retirement board shall retain sole discretion in exercising the
258 option, and no exercise of an option shall be subject to agreement
259 or acceptance by the contractor.

260 (b) The retirement board shall not exercise an option for
261 renewal, extension or purchase unless the retirement board, after
262 reasonable investigation of costs and benefits, has determined in
263 writing that the exercise of the option is more advantageous than
264 alternate means of procuring comparable services.

265 (6) All specifications shall be written in a manner which
266 describes the requirements to be met without having the effect of
267 exclusively requiring a proprietary service, or a procurement from
268 a sole source.

269 (7) All contracts shall be in writing, and the retirement board
270 shall make no payment for a service rendered prior to the execu-
271 tion of such contract.

272 (a) A contract made in violation of this section shall not be
273 valid, and the retirement board shall make no payment under such
274 contract. Minor informalities shall not require invalidation of a
275 contract.

276 (b) A person who causes or conspires with another to cause a
277 contract to be solicited or awarded in violation of a provision of
278 this section shall forfeit and pay to the appropriate retirement
279 board a sum of not more than two thousand dollars for each viola-
280 tion. In addition, the person shall pay double the amount of dam-
281 ages sustained by the retirement board by reason of the violation,
282 together with the costs of any action. If more than one person par-
283 ticipates in the violation, the damages and costs may be appor-
284 tioned among them.

285 (c) The commission or the retirement board shall have authority
286 to institute a civil action to enforce paragraph (b).

1 SECTION 11. Section 23 of Chapter 32 of the General Laws is
2 hereby amended by striking out subdivision (4) and inserting in
3 place thereof the following:—

4 (4) If the commission determines that a board or any retire-
5 ment system has violated or neglected to comply with any provi-
6 sions of this chapter, or the rules and regulations promulgated by
7 the Commission, the Commission may determine that such system
8 should be managed in accordance with orders of said commission.
9 The commission is hereby authorized to appoint a committee con-
10 sisting of three members, two of whom shall be members or
11 designees of the commission and one who shall be a member of a
12 retirement board other than the board subject to the commission
13 determination chosen by the commission from a list of three nom-
14 inees provided by the Massachusetts Association of Contributory
15 Retirement Systems (MACRS), to oversee any board that is
16 responsible for the administration of any such system. Based upon
17 the recommendation of said committee the commission shall,
18 direct the board to take or desist from any action in order to insure
19 that the system is managed with reasonable care, skill, prudence
20 and diligence. Such direction may include, but is not limited to,
21 the following:—

- 22 (a) transfer of assets to the PRIT Fund;
- 23 (b) termination of contracts;
- 24 (c) approval or denial of retirement benefits;
- 25 (d) employment or termination of employees;
- 26 (e) conduct a fiduciary audit;
- 27 (f) removal of board members;

28 (g) appointment of board members until such time as vacancies
29 can be filled pursuant to the provisions of chapter 32; and,

30 (h) scheduling of elections to fill a vacancy created by the
31 removal of a current elected member pursuant to the commission's
32 authority under this section.

33 Any person receiving a notice from the commission as set out
34 above shall not have a right to appeal the receipt of such notice to
35 the Contributory Retirement Appeal Board. Any person receiving
36 any communication, either verbal or written, subsequent to the
37 notice as required by this section in connection with the same
38 matter shall not have a right to appeal the receipt of such commu-
39 nication to the Contributory Retirement Appeal Board. Any
40 person aggrieved by any action taken, notice made or determina-
41 tion rendered by the commission in connection with this section
42 shall have a right to appeal to the superior court, in accord with
43 Section 16(6) of Chapter 32.

1 SECTION 12. Subdivision (4) of Section 16 of Chapter 32 of
2 the General Laws, as appearing in the 2004 Official Edition, is
3 hereby amended by inserting after the word “fulfilled”, in line 99,
4 the following words:— and matters subject to review by the supe-
5 rior court as provided for in subdivision (6).

1 SECTION 13. Section 16 of Chapter 32 of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 adding the following subdivision:—

4 (6) The commission may institute appropriate proceedings in
5 the superior court for enforcement of its final orders or decisions
6 issued pursuant to subdivision (4) of section 23 of chapter 32.
7 Any party aggrieved by a final order or decision of the commis-
8 sion pursuant to subdivision (4) of section 23 of chapter 32 may
9 institute proceedings for judicial review in the superior court
10 within thirty days after receipt of such order or decision. Any pro-
11 ceedings in the superior court shall, insofar as applicable, be gov-
12 erned by the provisions of section fourteen of chapter thirty A,
13 and may be instituted in the superior court for the county
14 (a) where the parties or any of them reside or have their principal
15 place of business within the commonwealth, or (b) where the
16 commission has its principal place of business, or (c) of Suffolk.

17 The commencement of such proceedings shall not, unless specifi-
18 cally ordered by the court, operate as a stay of the commission's
19 order or decision. If the commission, pursuant to the authority
20 granted by section 24(1) of chapter 32, seeks to compel the obser-
21 vance of or restrain the violation of the provisions of Sections 1 to
22 28, inclusive, a party aggrieved by such an action may appeal to
23 the superior court in accord with the provisions of section 14 of
24 chapter 30A. If an action pursuant to Section 24 (1) has already
25 been instituted in the superior court, the person's right to review
26 shall flow from the superior court case which has already begun.

1 SECTION 14. Paragraph (a) of subdivision (6) of Section 20 of
2 Chapter 32 of the General Laws, as appearing in the 2002 Official
3 Edition, is hereby amended by striking out lines 842 through 845
4 inclusive and inserting in place thereof the following:—

5 (a) The elected and appointed members of any city, town,
6 county, regional, district, or authority retirement board upon
7 acceptance of the appropriate legislative body shall receive a
8 stipend provided, however, that said stipend shall not be less than
9 three thousands dollars per annum nor exceed seven thousand five
10 hundred dollars per annum; provided further,

1 SECTION 15. Said subdivision, as so appearing, is hereby fur-
2 ther amended in line 853 by striking out the words “three thou-
3 sand” and inserting in place thereof the word “seven thousand five
4 hundred”.

1 SECTION 16. Section 20 of Chapter 32 of the General Laws is
2 hereby amended by adding the following sub-division:—

3 (7) In order to serve as a member of a retirement board an indi-
4 vidual shall comply with the provisions of this subdivision.

5 Elected or appointed members shall be required to undertake
6 four hours of training annually sponsored by the commission. The
7 commission shall offer at least four opportunities during the year
8 for board members to meet this requirement at times and places of
9 convenience throughout the state. The commission may offer this
10 education or may contract with other parties to provide such
11 training. The training curriculum shall, at a minimum, include the
12 topics of fiduciary responsibility, ethical conduct, and conflict-of-
13 interest.

14 Elected or appointed members shall also be required to under-
15 take an additional four hours training annually as prescribed by
16 the commission provided by the Massachusetts Association of
17 Contributory Retirement Systems or other local, state, regional
18 and national organizations recognized by the commission as
19 having expertise in retirement issues of importance to retirement
20 board members or other entities, on topics acceptable as the com-
21 mission may from time to time determine. The commission shall
22 certify such organizations as appropriate for conducting such
23 training upon application to the commission.

24 The commission shall provide retirement boards with a state-
25 ment of completion of education form on or before December 31
26 of each year. The board shall provide the forms to their members.
27 The form shall state under the pains and penalties of perjury
28 whether or not the retirement board member has undertaken the
29 combined eight hours of continuing education required by this
30 sub-division. Retirement board members shall submit the com-
31 pleted form by January 15 of the year following.

32 Any retirement board member who without good cause as
33 determined by the commission has failed to file a statement of
34 completion of education form with PERAC by January 15 shall be
35 notified by PERAC by February 15 of the failure to file. The com-
36 mission will afford the board member 30 days to provide just
37 cause for why he or she did not file the required form. Failure to
38 provide acceptable justification as determined by the commission
39 for not filing the form in a timely manner within 30 days shall
40 result in suspension of voting rights until the form is successfully
41 completed. The commission shall notify the retirement board of
42 the suspension of voting rights of the board member in question
43 and that board member shall not be entitled to vote on any matter
44 before the retirement board.

45 Any retirement board member who without good cause after
46 review by the commission has been determined to have not suc-
47 cessfully completed the aforementioned continuing education
48 requirements shall have his/her board voting rights suspended
49 until he or she has successfully completed the education require-
50 ments of the previous year. The commission will afford the board
51 member 30 days to provide good cause for why he or she did not
52 complete the required education requirements for the previous

53 year. Board members shall have 180 days to successfully com-
54 plete the continuing education requirements for the previous year.

55 Failure to successfully complete the education requirements
56 shall prohibit a retirement board member from serving beyond the
57 conclusion of the term in which the failure took place. In the
58 event the non-complying retirement board member is an ex-officio
59 member his or her term shall cease upon notification to the retire-
60 ment board by the commission of that non-compliance.

61 Each retirement board shall notify all prospective board mem-
62 bers and board members of the requirement to complete education
63 requirements at the time of receiving information about seeking
64 election to a retirement board, or prior to being appointed to a
65 retirement board.

66 The commission shall annually notify board members of the
67 requirement to complete continuing education.

68 The requirements established by this sub-division shall become
69 effective for calendar year 2008.

1 SECTION 17. Chapter 150E section 7 is hereby amended by
2 adding the following new subsection (e):

3 Any employer entering into a collective bargaining agreement
4 with an employee organization must provide a copy of said agree-
5 ment to the retirement board to which the employees covered by
6 the agreement are members. All retirement systems must maintain
7 files of all active collective bargaining agreements which cover
8 the systems members. The retirement board shall review collec-
9 tive bargaining agreements for compliance with the provisions of
10 chapter 32.

1 SECTION 18. Chapter 32, section 21 is hereby amended in
2 line 15 by adding the following new sentence after the word
3 “system”:

4 Each board shall maintain copies of all collective bargaining
5 agreements which cover the systems members and shall make
6 such agreements available to the commission for review at such
7 time as the commission shall specify.